

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

July 19, 2006

NOTICE
OF
CONTRACT NO. 071B6200280
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Evans Food Service, Inc. 6460 W. Maple Avenue P.O. Box 237 Swartz Creek, MI 48473 Email: stephp@evansfoodservice.com		TELEPHONE: Stephanie Chaney (800) 968-1520 ext. 419 VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-1650 Terry Harris
Contract Compliance Inspector: Jeffery A. White Disposable Paper Products, 10 Case Minimum or \$30.00 fee, Just-In-Time Delivery - Statewide		
CONTRACT PERIOD: From: June 1, 2006 To: June 1, 2011		
TERMS Net 30 Days	SHIPMENT 1 – 3 Days A.R.O.	
F.O.B. Delivered	SHIPPED FROM Swartz Creek, MI	
MINIMUM DELIVERY REQUIREMENTS 10 Cases; Orders below the minimum will be subject to a \$30.00 handling fee.		
MISCELLANEOUS INFORMATION:		

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT

The terms and conditions of this Contract are those of **ITB #07116200078** this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$13,623,430.00**

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

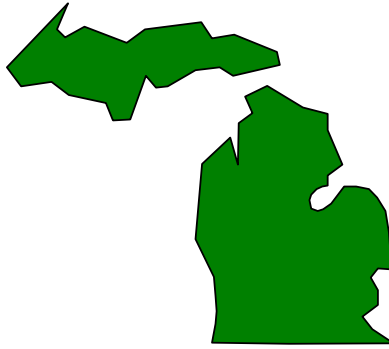
CONTRACT NO. 071B6200280
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Evans Food Service, Inc. 6460 W. Maple Avenue P.O. Box 237 Swartz Creek, MI 48473 Email: stephp@evansfoodservice.com		TELEPHONE: Stephanie Chaney (800) 968-1520 ext. 419
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-1650 Terry Harris
Contract Compliance Inspector: Jeffery A. White Disposable Paper Products, 10 Case Minimum or \$30.00 fee, Just-In-Time Delivery - Statewide		
CONTRACT PERIOD: From: June 1, 2006 To: June 1, 2011		
TERMS Net 30 Days	SHIPMENT 1 – 3 Days A.R.O.	
F.O.B. Delivered	SHIPPED FROM Swartz Creek, MI	
MINIMUM DELIVERY REQUIREMENTS 10 Cases; Orders below the minimum will be subject to a \$30.00 handling fee.		
MISCELLANEOUS INFORMATION: THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT. The terms and conditions of this Contract are those of ITB #07116200078 this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence. Estimated Contract Value: \$13,623,430.00		

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the **ITB No.07116200280**. Orders for delivery of equipment will be issued directly by the **Department of Management and Budget** through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE VENDOR:	FOR THE STATE:
Evans Food Service, Inc.	Signature
Firm Name	Sean Carlson, Chief Procurement Officer
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	Purchasing Operations
	Division
Date	Date



**STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations**

**Contract No. 071B6200
Just-in-Time Delivery of Disposable Paper Products
Minimum order of 10 Cases, with
a \$30.00 handling fee for orders below the minimum.**

*Table of Contents*

Article1 – Statement of Work (SOW)	6
1.0 <i>Project Identification</i>	6
1.1 Product Quality	6
1.2 Service Capabilities	7
1.3 Delivery Capabilities	9
1.4 Project Price	10
1.5 Quantity Term	12
ARTICLE 1B – VENDOR INFORMATION	14
1B.100 VENDOR INFORMATION	14
1B.200 QUALIFICATIONS	14
1B.300 DISCLOSURES	14
Article 2 – General Terms and Conditions	16
2.0 <i>Introduction</i>	16
2.001 GENERAL PURPOSE	16
2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR	16
2.003 NOTICE	16
2.004 CONTRACT TERM	17
2.005 GOVERNING LAW	17
2.006 APPLICABLE STATUTES	17
2.007 RELATIONSHIP OF THE PARTIES	17
2.008 HEADINGS	18
2.009 MERGER	18
2.010 SEVERABILITY	18
2.011 SURVIVORSHIP	18
2.012 NO WAIVER OF DEFAULT	18
2.013 PURCHASE ORDERS	18
2.1 <i>Vendor/Contractor Obligations</i>	18
2.101 ACCOUNTING RECORDS	18
2.102 NOTIFICATION OF OWNERSHIP	19
2.103 RESERVED	19
2.104 RESERVED	19
2.105 RESERVED	19
2.106 PREVAILING WAGE-RESERVED	19
2.107 PAYROLL AND BASIC RECORDS-RESERVED	19
2.108 COMPETITION IN SUB-CONTRACTING-RESERVED	19
2.109 CALL CENTER DISCLOSURE	19
2.2 <i>Contract Performance</i>	19
2.201 TIME IS OF THE ESSENCE	19
2.202 CONTRACT PAYMENT SCHEDULE	20
2.203 RESERVED	20
2.204 RESERVED	20
2.205 ELECTRONIC PAYMENT AVAILABILITY	20
2.206 RESERVED	20
2.3 <i>Contract Rights and Obligations</i>	20
2.301 INCURRING COSTS	20
2.302 CONTRACTOR RESPONSIBILITIES	20
2.303 ASSIGNMENT AND DELEGATION	20
2.304 TAXES	21
2.305 INDEMNIFICATION	21
2.306 LIMITATION OF LIABILITY - Reserved	23
2.307 CONTRACT DISTRIBUTION	23



2.308	RESERVED	23
2.309	ASSIGNMENT OF ANTITRUST CAUSE OF ACTION	23
2.310	PURCHASING FROM OTHER STATE AGENCIES	23
2.311	TRANSITION ASSISTANCE	24
2.312	RESERVED	24
2.313	RESERVED	24
2.314	WEBSITE INCORPORATION	24
2.4	<i>Contract Review and Evaluation</i>	24
2.401	CONTRACT COMPLIANCE INSPECTOR	24
2.402	PERFORMANCE REVIEWS	24
2.403	AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS	25
2.5	<i>Quality and Warranties</i>	25
2.501	PROHIBITED PRODUCTS	25
2.502	QUALITY ASSURANCE	25
2.503	INSPECTION	25
2.504	GENERAL WARRANTIES (goods)	26
2.505	CONTRACTOR WARRANTIES	26
2.507	RESERVED	27
2.508	RESERVED	27
2.601	BREACH DEFINED	32
2.602	NOTICE AND THE RIGHT TO CURE	32
2.603	EXCUSABLE FAILURE	32
2.7	<i>Remedies</i>	33
2.701	CANCELLATION	33
2.702	RIGHTS UPON CANCELLATION	34
2.703	RESERVED	34
2.704	RESERVED	34
2.705	SUSPENSION OF WORK	34
2.8	<i>Changes, Modifications, and Amendments</i>	35
2.801	APPROVALS	35
2.802	TIME EXTENTIONS	35
2.803	MODIFICATION	35
2.804	AUDIT AND RECORDS UPON MODIFICATION	35
2.805	CHANGES	36

APPENDICES:

Item List – Disposable Paper Products, 10 Case Minimum or \$30.00 handling fee.

**Article1 – Statement of Work (SOW)****1.0 Project Identification****1.001 SOLICITATION TYPE**

This is a formal Contract Agreement for the statewide provision of Just-In-Time Delivery of Disposable Paper Products, with a 10 Case Minimum order or \$30.00 handling fee, for the State of Michigan ("State"), and MiDeal Program Members (Authorized Local Units of Government).

1.002 PROJECT TITLE AND DESCRIPTION

The purpose of this contract for Just-In-Time Delivery of Disposable Paper Products, with a 10 Case Minimum order or \$30.00 handling fee.

The material to be acquired under this contract is for supplies in the following category(s):

1. Disposable Paper Products, with a 10 Case Minimum order or \$30.00 handling fee.

1.003 PROJECT CONTROL

- a. The Contractor will carry out this project under the direction and control of the Department of Management and Budget, Purchasing Operations (see Article 2.401).

1.004 COMMENCEMENT OF WORK

Contractor shall show acceptance of this agreement by signing two copies of the Contract and returning them to the Contract Administrator. Contractor shall not proceed with performance of the work to be done under this agreement, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms.

1.1 Product Quality**1.101 SPECIFICATIONS**

Acceptable brands are noted on the " contract" or lists attached. Contractor shall deliver only such brands, or State of Michigan approved alternate items of equal quality.

Definite Specifications - All commodities and/or services to be furnished hereunder shall conform to the specifications as noted in the " contract".

1.102 RESEARCH AND DEVELOPMENT

Evans continues to develop our on line information systems including warehousing, customer training, ordering, and product tracking systems. Evans is a shareholder and member of Unipro Foodservice support organization based in Atlanta Georgia. www.uniprofoodservice.com

Unipro supports Evans Foodservice in the areas of Quality control, Product Development, Product Warranty, Research & Development, Sales & Marketing, Training, National Product Recalls, and Quality Control. Unipro's quality control department is second to none. Unipro's brands include Code, Nugget, Nifda, and Comsource.



1.103 QUALITY ASSURANCE PROGRAM

Evans prides itself on the quality of all merchandise it delivers. To ensure quality and customer satisfaction, Evan's quality control program meets the highest standards.

The criteria for rejection of a product are established by product category. The receiver is responsible for any rejections. The Warehouse Operations Manager handles any disputes. The inspection criteria may range from visual inspections to more detailed reviews involving opening packages and taking core samples. All products are purchased or rejected upon receipt of the manufacturer's bill of lading. The only exceptions are concealed damage and product recalls.

Evans strictly use a first in, first out (FIFO) rotation philosophy. Before we place an order with an approved supplier, we have already agreed upon the quality standard for each item based on guidelines. We then place an order. The items then go through the suppliers quality control system. It is important to note that the owner of the brand or brand name is responsible for ensuring that a product meets its advertised specification.

Product purchased for Dry/Grocery is received and put away and tracked by our computer inventory system. All products are shipped using picking labels and product selectors are sent to inventory location to ensure product rotation.

Each buyer reviews daily inventory reports and our inventory control clerk on an as needed basis request spot checks on inventory. Cycle counting of inventoried items occurs on a daily basis to help identify inventory system discrepancies. Perpetual inventory is generally within ½% margin of error for all product movement.

To assure quality assurance, sales representatives are assigned to individual accounts to handle bad products, product recalls, damaged goods, etc.

1.104 WARRANTY FOR PRODUCTS OR SERVICES

Evans only purchases from manufactures that warrant their products. All manufactures included within the contract have a warranty program on file. Unipro warrants all Unipro private labels. Evans carries insurance coverage and warrants products delivered out of our facility.

1.2 Service Capabilities

1.201 CUSTOMER SERVICE/ORDERING

Stephanie Chaney is the main contact for the State of Michigan and is responsible to enter and track all State of Michigan orders. Orders can be entered up to 365 days forward. Orders received prior to 4:00 PM on the pre-scheduled delivery day are shipped the next day. Any special handling situations are handled with the facilities at the time of order processing. Orders entered in our system for future delivery are pre-staged 24 hours prior to delivery. If an out of stock may accrue the agency is offered an acceptable substitution or the option to wait for the original product. All deliveries are invoiced at the time of delivery and any changes are noted on the delivery receipt.

An electronic catalog of all Evans products is available on our web site www.evansfoodservice.com

The State of Michigan will receive best pricing during the contract based on similar volume and contract dating.

At the request of Purchasing Operations, the Contractor shall have the ability to prevent items not listed in the contract from being purchased. The State reserves the right to add items to the contract list if they are found to be necessary to the needs of State agencies and departments.



1.202 TRAINING

Evans will contact each using agency concerning ordering, shipping, invoicing, and receiving. We will notify each facility on product handling, including storage, and special handling needed.

In addition Evans has available, upon request, an Internet based training system, which includes safety, basic handling methods and warehouse certification.

1.203 SPECIAL PROGRAMS

Returned Items

Evans will conform to the State return policy, including any disclosed damage. Damage product will be returned to Evans for credit.

There are no restocking charges for stocked items.

1.204 SECURITY

All drivers are screened prior to employment for their driving record, criminal history, medical history, and 9-panel substance abuse. Evans drivers are assigned uniforms with the company's logo along with their name on each uniform.

The contractor may be required to make frequent deliveries to State of Michigan facilities. The contractor may be required to take measures to ensure the security and safety of these buildings. This shall include, but is not limited to, performance of security background checks on all personnel assigned to State of Michigan facilities (i.e. delivery people) use of uniforms and ID badges, etc. The contractor also agrees to advise the State of how security background checks are performed, what the security check consists of, the name of the company that performs the security checks. If security background checks are performed on staff, the contractor shall indicate the name of the company that performs the check as well as provide a document stating that each employee has satisfactorily completed a security check and is suitable for assignment to State facilities, if requested. Upon request by the State, contractors shall provide the results of all security background checks.

The State will decide whether to issue State ID badges to the contractor delivery personnel or accept the ID badge issued to delivery personnel by the contractor.

The State may decide to also perform a security background check. If so, contractors will be required to provide to the State a list of all delivery people that will service State facilities, including name and date of birth (social security number or driver license number would also be helpful).

The contractor and its subcontractors shall comply with the security access requirements of individual State facilities (ex. The Department of Corrections requires LEIN checks be performed on anyone entering a prison facility).

1.205 REPORTS

Contractor shall be able to provide various reports, when requested by the State. At a minimum, the Contractor shall electronically submit the following reports to Purchasing Operations and/or each State agency:

- a. Fill rate information for Contract and non-Contract items, statewide and by agency, which shall include the number of orders received, orders processed, back orders, partially filled orders, reorders, and total dollar amount spend. This report shall be submitted monthly by the 15th day of the month following the reporting period.



- b. Usage reports by agency and statewide indicating the number and price of each item sold. This report will be submitted monthly by the 15th day of the month following the reporting period.
- c. A list of items that should be placed on Contract and a list of items, which should be removed from the Contract and the anticipated cost savings, associated with these actions.
- d. Viable methods by which the State can save at least 3% of its total janitorial supply expenses during the next year. This report should be submitted annually 60 days prior to the Contract anniversary date.
- e. Custom reports that the Contract Compliance Inspector may request at any time on an as needed basis.

1.206 CATALOG

- a) The Contractor shall provide, at no charge, the on-Contract catalog in hard copy to all State agencies without limitation as to quantity.
- b) The on-Contract catalog shall include all Contract items including product descriptions, product number, unit of measure, price, ordering instructions, return instructions, customer service telephone and fax numbers, and customer service hours of operation.
- c) All changes including supplements, deletions and price revisions must be approved by Purchasing Operations.
- d) Catalogs incorporating all changes will be issued once every twelve months.
- e) Updates/supplements to the catalog will be issued monthly when changes have been approved by Purchasing Operations (see Article 1.601).
- f) The Contractor will maintain a list of active State customers to whom the Contractor will send all catalogs and supplements.
- g) The selling of the mailing lists containing the names of State customers is absolutely prohibited. Mailing of promotional materials may only be permitted with the prior approval of the Contract Administrator.

Evans will provide all agencies with printed catalogs for approved supplies with no charge to the customer. The catalog will contain all Contract items including product descriptions, product number, unit of measure and price; instructions on ordering and returning items; customer service telephone and fax numbers and hours of operation; and a list of restricted items.

Additions and/or deletions of items and price revision shall be approved by Purchasing Operations prior to implementation.

1.3 *Delivery Capabilities*

Evans currently services the total Lower Peninsula of Michigan. If subcontracted Reinhart would service the Upper Peninsula of Michigan.

1.301 TIME FRAMES

All orders shall be delivered within two to three (2-3) business day after receipt of order.

1.302 MINIMUM ORDER

The minimum order is 10 cases of any combination of items. Orders below the minimum will be subject to a flat charge of \$30.00.



1.303 PACKAGING

Each order delivered shall be individually packaged and will indicate the ordering agency's name, address, and order number. Each order will utilize the box size that is the most appropriate for the quantity of items being shipped. Each package will contain a packing slip. This packing slip shall contain the following information: Agency name and address; name and telephone number or the person to whom the order is being delivered; the state's order number; stock number and brief description of each item; unit of issue and quantity issued of each item; unit price and extended price for each item; date order was received by Contractor; shipping code to identify shipping condition (item temporarily out of stock/will ship late, discontinued item, or item temporarily out of stock/please reorder); and total price of the order.

Packaging and containers, etc., shall be in accordance with supplier's commercial practice and shall meet the requirements of Department of Transportation (D.O.T.) and rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

1.304 PALLETIZING

Shipments shall be palletized whenever possible and shall conform to the following:

- Manufacturer's standard 4-way shipping pallets are acceptable.
- Maximum height: 5'6"; including pallet.
- Maximum weight: 3000 pounds; including pallet.
- Pallets are to be securely banded or shrink-wrapped.
- The cost of palletizing must be included in the unit price.

1.305 DELIVERY TERM

Prices are "F.O.B. Delivered" with transportation charges prepaid on all orders.

1.4 Project Price

1.401 PROPOSAL PRICING

a. Best Customer

The State, or any participating Local Unit of Government, expects to be considered the "Best Customer" regarding Janitorial Supplies purchased in the State. In other words, since the total quantity included in this contract far exceeds the quantity that may be purchased by any other State entity in the state, the State expects to receive the "best price" during the term of the Contract for all locations.

Evans guarantees that the State will receive best customer pricing based on similar size customers with similar program offerings.

b. Invoicing

Some State agencies are centralized and others are decentralized for ordering and payment processes. Contractor must be capable of submitting one consolidated invoice to an agency-centralized location or multiple invoices to an agency for each delivery location.

c. Donations



Donations of products, supplies or services to charitable, nonprofit or government entities, if the donations are recognizable as such and are deductible under the federal Internal Revenue Code, shall not be considered contracts, agreements, sales or arrangements with other government units or commercial customers that call for the application of this provision.

1.402 QUICK PAYMENT TERMS

Evans does not offer any quick payment discounts.

1.403 PRICE TERM

Prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective.

Requests for price changes in Janitorial Supplies may only be submitted at the end of each 365-day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests such as, but not limited to, the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics.

Purchasing Operations also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365-day period.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST THIRTY DAYS PRIOR TO THEIR REQUESTED EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be cancelled (see Section 2.701). The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

1.404 ADMINISTRATIVE FEE

The Contractor must collect an Administrative Fee on all sales, including participating local units of government (MiDeal Program Members) transacted under this Contract. The Contractor must remit the Administrative Fee in U.S. dollars within thirty (30) days after the end of the monthly sales reporting period. The Administrative Fee equals 6% of the total monthly sales reported. Contractors were required to include the Administrative Fee in their prices.

The Contractor must remit any monies due as a result of the close-out report at the time the close-out report is submitted to Purchasing Operations.

The Contractor must pay the Administrative Fee collected by check. To ensure the payment is credited properly, the Contractor must identify the check as an "Administrative Fee" and include the following information with the payment:

Applicable State BPO Number, report amount(s), and reporting period covered.

Contractor must forward the check to the following address:



Department of Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut Street
P.O. Box 30681
Lansing, MI 48909

Please make check payable to: Treasurer, State of Michigan

1.405 BILLINGS

The Contractor shall have the capability to bill monthly by hard copy and/or electronically and is responsible for developing the electronic billing interface in accordance with the requirements provided by the State. The Contractor shall be able to bill each agency by account codes as well as bill centrally to each department by agency and further by agency account codes depending on the needs of each department. All billings shall include the following information:

- Agency name and address;
- Purchase order or packing slip number;
- Account codes;
- Stock number and brief description of each item;
- Quantity issued of each item;
- Unit price and extended price of each item;
- Statement total; and
- Payment terms

1.406 RESERVED

1.5 Quantity Term

1.501 REQUIREMENTS

Vendor agrees to supply all that the State and or MiDeal Members require.

1.6 *Other Terms and Conditions*

1.601 CHANGE MANAGEMENT

If a proposed Contract change is approved by the Contract Compliance Inspector, they will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the Purchasing Operations Director (or authorized designee), agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by DMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

**1.602 FILL RATE**

The Contractor should maintain a monthly statewide average Fill Rate of 98%.

Orders not filled and partials should be indicated on the packing slip along with the availability of these items (see Article 1.303). Items that are reordered, backordered or partially filled are not considered filled items when calculating the service level.

Should the Contractor fail to meet the delivery schedule, thereby making it necessary for an agency to purchase urgently needed items from another source, the Contractor may be required to pay the difference between the Contract price and agency's purchase price.

If the fill rate falls below 94% for three consecutive months and the Contractor fails to provide an explanation for the reduction, which is satisfactory to the State, the State may cancel the contract with a 30-day written notice to the Contractor.

1.603 RECYCLING/ENVIRONMENTAL AWARENESS

Contractors were required to explain any recycling and/or environmental awareness efforts their firm utilizes, such as, green factory initiatives, recycled containers, re-use of materials, minimization of scrap material, etc.

Please note that contractors were encouraged to offer products containing recovered materials suitable for the intended use. By doing so, the contractor warrants the product(s) is at least functionally equivalent to the contract specifications. "Recovered Material" is defined as post-consumer waste (any product generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of collection, recycling, and disposition), and secondary waste (industrial by-products as in wastes generated after completion of a manufacturing process that would normally not be reused). All contractors were requested to indicate in their proposal the percentage of recycled materials, if any, contained in each item offered on contract.

Contractors were also required to identify any mercury containing products being offered and shall provide mercury-free alternatives, when available. (See also Section 2.510.)

**ARTICLE 1B – VENDOR INFORMATION****1B.100 VENDOR INFORMATION****1B.101 Vendor Name and Address**

Evans Food Service, Inc.

1B.102 Location Address

6460 W. Maple Avenue
P.O. Box 237
Swartz Creek, MI 48473

1B.103 Organization and Year – Reserved**1B.104 Contractor Contact**

Stephanie Chaney, (810) 635-2444 or (800) 968-1520 ext. 419, fax (810) 635-2534,
e-mail stephp@evansfoodservice.com , website www.evansfoodservice.com

Internet ordering system: www.evansfoodservice.com

1B.200 QUALIFICATIONS**1B.201 Prior Experience - Reserved****1B.202 Staffing**

Stephanie Chaney, Project Manager, ext. 419

Tracy Griffin, Customer Service Manager, ext. 403

Ken Durbal, Manufacturer/Supplier Rep., ext. 423

Ryan Solesby, IT Order Specialist (Online Ordering)

Rick Herman or Bernie Jensen, Reinhart Food Service Rep., (906) 249-1428 or (800) 827-4030

Reinhart Food Service LLC., (delivery in upper peninsula)
881 County Road 480
Marquette, MI 49855

Reinhart Food Service LLC will serve as a subcontractor for the Upper Peninsula, and be responsible for placement of orders, delivery operations, and direct invoicing, under the prime contractor federal I.D. mail code 002.

1B.300 DISCLOSURES**1B.301 Disclosure of Litigation**

(a) Disclosure. Vendors are required to disclose any material criminal litigation, investigations or proceedings involving the Vendor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Vendor (and each Subcontractor) must disclose to the State any material civil litigation, arbitration or proceeding to which Vendor



(or, to the extent Vendor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Vendor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Vendor or, to the extent Vendor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement in Vendor's bid response. Details of settlements, which are prevented from disclosure by the terms of the settlement, may be annotated as such. Information provided to the State from Vendor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

1B.303 MIDEAL - Extended Purchasing

NON-STATE AGENCY REQUIREMENTS

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. The contractor is requested to complete the attached "Non-State Agency Statement" to indicate a willingness to supply commodities to these authorized local units of government, school districts, etc. as well as the state departments and agencies. Should a contract result, a listing of approved program members will be included.

Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis. Orders received from non-approved local units of government shall not be considered unless prior approval is granted by DMB Office of Purchasing Operations.

NON-STATE AGENCY STATEMENT

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to As a result of the enactment of this legislation, the MIDEAL Program has been developed. This program extends the use of state contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds. It is the policy of the Office of Purchasing Operations, Department of Management and Budget, that the final approval to utilize any such contract in this manner must come from the contract vendor.

In such cases, contract vendors supply merchandise at the established State of Michigan contract prices and terms. Inasmuch as these are non-state agencies, all purchase orders will be submitted by, invoices will be billed to, and payment will be remitted by the authorized MIDEAL member on a direct and individual basis in accordance with contract terms.

It is the responsibility of the contractor to ensure the non-state agency is an authorized MIDEAL member prior to extending the state contract price.

☒ Commodities and/or services on this Invitation to Bid will be supplied to State of Michigan departments and agencies, and authorized MIDEAL Program members in accordance with the terms and prices quoted. A complete listing of eligible participants in the MIDEAL Program will be provided if this option is selected.



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for Just-In-Time Delivery of Disposable Paper Products for the State of Michigan (“State”), and MiDeal Program Members (Authorized Local Units of Government). Exact quantities to be purchased are unknown, however, as the successful contractor you will be required to furnish all such materials and services as may be ordered during the Contract period. Quantities specified if any, are estimates based on prior purchases, and neither the State nor MiDeal Members are obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form, Agency Voucher, or Procurement Card.

MiDeal Program Members (Authorized Local Units of Government) may also issue orders (see attached Non-State Agency Statement, Article 1B.303)

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for the State of Michigan, hereinafter known as the State and for MiDeal Program Members (Authorized Local Units of Government). Where actions are a combination of those of Purchasing Operations and the State agencies, the authority will be known as the State.

Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Purchasing Operations is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Purchasing Operations will remain the SOLE POINT OF CONTACT throughout the procurement process.

Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Purchasing Operations and the listed Contract Administrator.

All communications covering this procurement must be addressed to Contract Administrator indicated below:

Department of Management and Budget
Purchasing Operations
Terry Harris, Buyer
2nd Floor, Mason Building
P O Box 30026
Lansing, Michigan 48909
(517) 241-1650
harrisT@michigan.gov

2.003 NOTICE

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.



2.004 CONTRACT TERM

The term of this Contract will be for five (5) years and will commence with the issuance of a Contract. This will be June 1, 2006 through June 1, 2011.

2.005 GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

2.006 APPLICABLE STATUTES

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)

MI OSHA MCL §§ 408.1001 – 408.1094

Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.

Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.

MI Consumer Protection Act MCL §§ 445.901 – 445.922

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.

Department of Civil Service Rules and regulations

Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.

Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

Davis-Bacon Act (DBA) 40 USCU § 276(a), et seq.

Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.

Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

Rules and regulations of the Equal Employment Opportunity Commission (EEOC)

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.

The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.

The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.

The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106

Sherman Act, 15 U.S.C.S. § 1 et seq.

Robinson-Patman Act, 15 U.S.C.S. § 13 et seq.

Clayton Act, 15 U.S.C.S. § 14 et seq.

2.007 RELATIONSHIP OF THE PARTIES

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

**2.008 HEADINGS**

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

2.009 MERGER

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

2.010 SEVERABILITY

Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

2.011 SURVIVORSHIP

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

2.012 NO WAIVER OF DEFAULT

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.

2.013 PURCHASE ORDERS

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form, Agency Voucher, or Procurement Card referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

*2.1 Vendor/Contractor Obligations***2.101 ACCOUNTING RECORDS**

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

**2.102 NOTIFICATION OF OWNERSHIP**

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing Operations within 30 days.
2. The Contractor shall also notify the Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Purchasing Operations or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes;
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 RESERVED**2.104 RESERVED****2.105 RESERVED****2.106 PREVAILING WAGE-RESERVED****2.107 PAYROLL AND BASIC RECORDS-RESERVED****2.108 COMPETITION IN SUB-CONTRACTING-RESERVED****2.109 CALL CENTER DISCLOSURE**

Vendor and/or all subcontractors involved in the performance of this contract providing call or contact center services to the State of Michigan must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this agreement.

2.2 Contract Performance**2.201 TIME IS OF THE ESSENCE**

Contractor/Vendor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

**2.202 CONTRACT PAYMENT SCHEDULE**

All invoices shall reflect actual orders delivered. The Contractor shall submit a monthly invoice of all orders placed during the reporting period, which includes an itemized listing of orders delivered; furthermore, the invoice shall list the contract number.

Some State agencies are centralized and some are decentralized. Contractor must be capable of submitting one consolidated invoice to an agency centralized location or multiple invoices to an agency for each delivery location.

2.203 RESERVED**2.204 RESERVED****2.205 ELECTRONIC PAYMENT AVAILABILITY**

Electronic transfer of funds is available to State contractors. Contractor is required to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at www.cpexpress.state.mi.us.

2.206 RESERVED*2.3 Contract Rights and Obligations***2.301 INCURRING COSTS**

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

2.302 CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing Operations.

The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Purchasing Operations has given written consent to the delegation.



The Contractor must obtain the approval of the Director of Purchasing Operations before using a place of performance that is different from the address that contractor provided in the bid.

2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

2.305 INDEMNIFICATION

General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.



Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against



the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

2.306 LIMITATION OF LIABILITY - Reserved

2.307 CONTRACT DISTRIBUTION

Purchasing Operations shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

2.308 RESERVED

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the contractor hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

2.310 PURCHASING FROM OTHER STATE AGENCIES

State agencies are exempt from utilizing the contract if they would instead prefer to purchase similar items from the following State agencies:



- Michigan State Industries (MSI), which provides valuable training opportunities for inmates at State correctional facilities.

2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 30 days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

2.312 RESERVED

2.313 RESERVED

2.314 WEBSITE INCORPORATION

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

Upon receipt at Purchasing Operations of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies **no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Purchasing Operations.** The Contract Compliance Inspector for this project is:

Terry Harris
Purchasing Operations
530 West Allegan Street, 2nd Floor
P O Box 30026
Lansing, MI 48909

2.402 PERFORMANCE REVIEWS

The State may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.



Upon a finding of poor performance, which has been documented by Purchasing Operations, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Purchasing Operations, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

Performance reviews may also include an audit of past invoices. If errors are found in past invoicing, Contractor will reimburse the State for the difference within 30 days of the audit.

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change.

2.502 QUALITY ASSURANCE

The State reserves the right to periodically test products, which have been received to verify compliance with specifications. If laboratory analysis shows that the product does not meet specifications or fails to perform satisfactorily at any time, the Contractor shall be responsible for:

1. All costs of testing and laboratory analysis.
2. Disposal and/or replacement of all products which fail to meet specifications.
3. All costs of repair and/or replacement of equipment deemed to have been damaged by substandard products as determined by the State.

2.503 INSPECTION

All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of the Contract, the State shall have the right to reject the goods or retain the goods and correct the defects. The Contractor shall pay the State for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery. The Contractor must arrange for the return of said goods, including paying for handling, packing, and transportation costs. The State has the authority to dispose of the goods without further liability to the State in the event the Contractor fails to make arrangements within the specified time period.



2.504 GENERAL WARRANTIES (goods)

Warranty of Merchantability – Goods provided by vendor under this agreement shall be merchantable. All goods provided under this contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the vendor or on the container or label.

Warranty of fitness for a particular purpose – When vendor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the vendor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

Warranty of title – Vendor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by vendor, under this agreement, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.505 CONTRACTOR WARRANTIES

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the products that are separately chargeable to the State;
2. The Contractor will provide the products in a manner that does not infringe the proprietary rights of any third party;
3. The Contractor will provide the products in a manner that complies with all applicable laws and regulations;
4. The Contractor has duly authorized the execution, delivery and performance of the Contract;
5. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
6. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
7. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
8. The Contractor is qualified and registered to transact business in all locations where required.
9. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.



10. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
11. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any Contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
12. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, it true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

2.506 RESERVED**2.507 RESERVED****2.508 RESERVED****2.509 RESERVED****2.510 ENVIRONMENTAL AWARENESS**

Definition - '*Environmentally preferable products*' means products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product, recycled content and recyclability, energy efficiency, and the presence undesirable materials in the product, particularly persistent, bioaccumulative toxic chemicals, (PBTs).

Environmental Purchasing Policy - The State of Michigan encourages the use of products and services that impact the environment less than competing products. Therefore, contractors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. In addition, information on any relevant third party certification (such as Green Seal, etc.) should also be provided.



- A. Recycled Packaging.** Contractors may offer some or all of the following items listed below or provide alternative proposal as to how packaging materials can be reduced, eliminated or otherwise made more environmentally preferable. It is desirable that Contractors offer packaging which:
- a. is made from recycled content which meets or exceeds all federal and state recycled content guidelines (currently 25-50% recovered fiber, including 25-50% post-consumer fiber for all corrugated cardboard)
 - b. minimizes or eliminates the use of polystyrene or other difficult to recycle materials
 - c. minimizes or eliminates the use of disposable containers such as cardboard boxes
 - d. provides for a return program where packaging can be returned to a specific location for recycling
 - e. contains materials, which are easily recyclable in Michigan.
- B. Recycled Content of Products Offered.** Contractors are expected to offer products using recovered materials suitable for the intended use whenever possible. The following definitions apply to 'Recovered Material':

'Post-Consumer Waste', is defined as any products generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product

'Secondary Waste', is defined as industrial by-products and wastes generated after completion of a manufacturing process that would normally be disposed.

All recycled products and packaging are required to perform at the level outlined in this contract.

Certification

Evans certifies that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

C. Clean Air and Water

Evans certifies that any facility to be used in the performance of this contract IS NOT listed on the Environmental Protection Agency (EPA) List of Violating facilities.

The vendor will immediately notify the state, before award, of the receipt of any communication from the EPA or the state, indicating that any facility that the vendor proposes to use in the performance of this contract is under consideration to be listed on the EPA List of Violating Facilities or any enforcement action.



- D. **Mercury Content**. It is the clear intent of state agencies to avoid purchasing products that contain mercury whenever possible. Contractor shall offer mercury-free products when available. Should mercury-free alternatives not exist, as presently is the case with fluorescent lamps, contractor shall offer the lowest mercury content available. Contractor shall disclose whenever products contain added mercury by using the following format.

(X) Product does not contain Mercury

Contractor shall ensure that mercury added products containing mercury in excess of 1 gram or 250 ppm, shall be labeled: "contains mercury".

- E. **Polybrominated Flame Retardents (BFR)**. Contractor shall disclose whether the products being offered contain toxic flame retardants. Contractor is encouraged to provide BFR-free alternatives when available.

For each product offered, please list the components that contain flame retardants and the name and CAS number of the flame retardant(s) they contain. The Contractor may need to ask the manufacturer or material supplier for this information. Contractors are encouraged to provide safer, non-halogenated flame retardants alternatives when available.

(X) Product does not contain BFR's

- F. **Hazardous Material Identification**. 'Hazardous material', as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

- (1) The contractor was required to list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (if none, insert 'None')	Identification Number
None	

- (2) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (3) The apparently successful contractor agrees to submit, for each item as required prior to award, a **Material Safety Data Sheet** for all hazardous material identified in paragraph (1) of this clause. Data shall be submitted in accordance with Federal Standard No. 313,

whether or not the apparently successful contractor is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in



the apparently successful contractor being considered non-responsive and ineligible for award.

- (4) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (3) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (5) Neither the requirements of this clause nor any act or failure to act by the State shall relieve the Contractor of any responsibility or liability for the safety of the State, Contractor, or subcontractor personnel or property.
- (6) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (7) The State's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (a) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to:
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the State for these purposes.
 - (b) To use, duplicate, and disclose data furnished under this clause, in precedence over any other clause of this contract providing for rights in data.
 - (c) The State is not precluded from using similar or identical data acquired from other sources.

G. Waste Reduction Program. Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*). The following definitions apply to 'Waste Reduction':

'Recycling', means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products." This definition excludes the use of these materials as a fuel substitute or for energy production.

'Waste prevention', means any action undertaken to eliminate or reduce the amount, or the toxicity, of materials before they enter the waste stream. This action is intended to conserve resources, promote efficiency, and reduce pollution." Waste prevention includes reduction and reuse, but not recycling.



'Waste reduction', means any practice, such as an equipment or technology modification, a process or procedure modification, a reformulation or redesign of a produce, a substitution of raw materials, or improved management, training, or inventory control, which practice is undertaken by a person to directly or indirectly reduce the volume or quantity or toxicity of waste that may be released into the environment or that is treated at a location other than the location where it is produced.

'Pollution Prevention', is defined as the practice of minimizing the generation of waste at the source and, when wastes can not be prevented, utilizing environmentally sound on-site or off-site recycling or reuse. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

H. Ozone Depleting Substances

'Ozone-depleting substance', as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as:

- (1) Class I, including, but not limited to, chlorofluorocarbons, halos, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydro chlorofluorocarbons.

The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

'Warning: Contains (or manufactured with, if applicable)

I. Refrigeration and Air Conditioning

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

J. Emergency Planning and Community Right-to-Know Reporting - By signing this offer, the contractor certifies that:

- (1) The owner or operator of facilities that will be used in the performance of this contract is in compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.). EPCRA filing and reporting requirements include emergency planning notification, release reporting, hazardous chemical inventory reporting, and toxic chemical release inventory (TRI) reporting.



- (2) The owner or operator of facilities that will be used in the performance of this contract will maintain compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.) for the life of the contract.

2.6 Breach of Contract

2.601 BREACH DEFINED

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this Contract, if the Contractor breaches, such a breach may be considered as a default in the performance of a material obligation of this Contract.

2.602 NOTICE AND THE RIGHT TO CURE

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another Contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its sub-Contractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without



liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its sub-Contractors will not relieve the Contractor of its obligations under the Contract except to the extent that a sub-Contractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the sub-Contractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.7 Remedies

2.701 CANCELLATION

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents, and employees for any of the following reasons:

1. **Material Breach by the Contractor.** In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of Contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. **Cancellation for Convenience by the State.** The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.



3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or sub-Contract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.702 RIGHTS UPON CANCELLATION

Termination Assistance. If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

2.703 RESERVED

2.704 RESERVED

2.705 SUSPENSION OF WORK

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that the Contract Administrator determines appropriate for the convenience of the State.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this Contract, or (2) by the Contract Administrator's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in



writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order);
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

2.802 TIME EXTENTIONS

Time extensions for Contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the Contract completion date will be extended only for those specific elements related to the changed work and that the remaining Contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

2.803 MODIFICATION

Purchasing Operations reserves the right to modify this Contract at any time during the Contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

The State reserves the right to add an item(s) that are not described on the item listing and are available from the Contract vendor. The item(s) may be included on the Contract, only if prior written approval has been granted by Purchasing Operations.

2.804 AUDIT AND RECORDS UPON MODIFICATION

DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form



Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Purchasing Operations. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

The State of Michigan, upon request, shall have access to any and all records pertaining to State accounts compiled during the term of the Contract.

2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
- (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the State-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
- (1) The date, circumstances, and source of the order; and
 - (2) That the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

2.806 LIABILITY INSURANCE

A. Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.



The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

All insurance coverage provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.

See www.michigan.gov/cis

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of DMB, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of DMB. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

The Contractor is required to pay for and provide the type and amount of insurance checked **below**:

- ☒ 1. Commercial General Liability with the following minimum coverage:
- | | |
|-------------|--|
| \$2,000,000 | General Aggregate Limit other than Products/Completed Operations |
| \$2,000,000 | Products/Completed Operations Aggregate Limit |
| \$1,000,000 | Personal & Advertising Injury Limit |
| \$1,000,000 | Each Occurrence Limit |
| \$500,000 | Fire Damage Limit (any one fire) |

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.



The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- ☒ 4. Employers liability insurance with the following minimum limits:

\$100,000 each accident
\$100,000 each employee by disease
\$500,000 aggregate disease

- ☐ 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
- ☐ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- ☐ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
- ☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

**B. Subcontractors**

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

C. Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of DMB certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insured, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.



State of Michigan Contract 071B6200280
DISPOSABLE PAPER PRODUCTS
EQUAL ALTERNATIVES (SUBSTITUTE PRODUCTS)
CONTRACT PRICING
EVANS FOOD SERVICE

DISPOSABLE PAPER PRODUCTS - EQUAL ALTERNATIVES (SUBSTITUTE PRODUCTS)							
#REF!							
Item Index No.	PRODUCT DESCRIPTION	UNITS OF MEASURE		Manufacturer	Manufacturer SKU No.	Michigan Commodity Code	J.I.T. Unit Price (1 - 3 Dy Del.)
		Standard Unit of Measure (SUOM)	Quantity per SUOM				
1	PAPER TOILET SEAT COVER SAFE T GARD WHITE 14.5"X17.0" 250/PKG 20PACKS PER CASE FITS BOBRICK DISPENSERS	Case	20	GEORGIA PACIFIC	47046	640-75-56-1015	\$34.83
2	NAPKIN EMBOSSED WHITE WINGFOLD 9"X12" FOLDED 250/PKG 32 PACKS / CASE APPRX BASIS WGT 12.9 LBS	Case	32	GEORGIA PACIFIC	39201	640-50-59-0775	\$23.87
3	NAPKIN EMBOSSED WHITE OFF CENTER FOLD MORNAP JR 13"X12.1" 625/PKG 8 PACKS/ CASE APPRX BASIS WGT 12.9 LBS	Case	8	GEORGIA PACIFIC	37802	640-50-59-1100	\$25.11
4	NAPKINS EMBOSSED WHITE QUARTER FOLD 12.5"X 11.5" 500/PKG 12PACKS/ CASE APPRX BASIS WGT 12.4 LBS	Case	12	GEORGIA PACIFIC	37707	640-50-59-1310	\$29.78
5	NAPKIN EMBOSSED WHITE QUARTER FOLD 17"X17" 1PLY 500/PKG 8PACKS/ CASE APPRX BASIS 13 LBS	Case	8	GEORGIA PACIFIC	36200	640-50-59-2200	\$34.17
6	PAPER TOWEL C-FOLD WHITE 10.25"X13.25" 240/PKG 10PACKS/ CASE APPRX BASIS 31.8 LBS	Case	10	GEORGIA PACIFIC	20603	640-75-70-4359	\$14.36
7	PAPER TOWEL C-FOLD NATURAL 10.25"X13.25" 240/PKG 10PACKS/CASE APPRX 28 LBS	Case	10	GEORGIA PACIFIC	21924	640-75-70-4201	\$12.29
8	PAPER TOWEL MULTIFOLD NATURAL 9.25"X9.5" 250/PKG 16 PACKS / CASE APPRX BASIS WGT 24 LBS	Case	16	GEORGIA PACIFIC	23304	640-75-71-2253	\$12.68
9	PAPER TOWEL MULTIFOLD WHITE 9.25"X9.5" 180/PKG 16 PACKS/CASE APPROX BASIS 28 LBS	Case	16	GEORGIA PACIFIC	20306	640-75-71-2568	\$13.23
10	PAPER TOWEL SINGLEFOLD NATURAL 9.5"X10.62" 250/PKG 16PACKS/CASE APPRX BASIS WGT 24 LBS	Case	16	GEORGIA PACIFIC	23504	640-75-72-5333	\$12.29
11	PAPER TOWEL SINGLEFOLD WHITE 9.5"X10.62" 250/PKG 16 PACKS /CASE APPROX BASIS WGT 27 LBS	Case	16	GEORGIA PACIFIC	20904	640-75-72-5373	\$16.43
12	PAPER TOWEL ROLL WHITE 10"X800' FOR ENMOTION TOUCHLESS DISPENSER 6ROLLS /CASE	Case	6	GEORGIA PACIFIC	89460	640-75-90	\$39.91
13	PAPER TOWEL ROLL WHITE HOUSEHOLD PERFORATED 2 PLY 11"X8.8" 100SHEETS / ROLL 30 ROLLS/ CASE APPRX BASIS WGT 26.5 LBS	Case	30	GEORGIA PACIFIC	27300	640-75-90-1217	\$18.38
14	PAPER TOWEL ROLL NATURAL UNPERFORATED 7.87"X800' 6ROLLS / CASE APPRX BASIS WGT 24 LBS	Case	6	GEORGIA PACIFIC	26301	640-75-90-1300	\$16.12
15	PAPER TOWEL ROLL UNPERFORATED NATURAL 7.87"X350' 12 ROLLS / CASE APPRX BASIS WGT 24 LBS	Case	12	GEORGIA PACIFIC	26401	640-75-90-1600	\$14.63
16	PAPER TOWEL ROLL UNPERFORATED WHITE 7.87"X350' 12 ROLLS / CASE APPROX BASIS WGT 24 LBS	Case	12	GEORGIA PACIFIC	28706	640-75-90-1700	\$19.00
17	FACIAL TISSUE 2PLY DISPENSER PACKAGE , WHITE 8"X8.3" 100 SHEETS / BOX 30PACKS /CASE APPRX BASIS WGT 18.5 LBS	Case	30	GEORGIA PACIFIC	47410	640-50-77-1258	\$12.17
18	TOILET TISSUE 1 PLY ROLLS WHITE WRAPPED 3.9"X4.5"L 1800SHEETS / ROLL 48ROLLS / CASE APPRX BASIS WGT 10.4 LBS	Case	48	GEORGIA PACIFIC	17390	640-75-55-0650	\$32.71
19	TOILET TISSUE 2 PLY ROLLS WHITE WRAPPED 3.9"X4.5"L 1000SHEETS / ROLL 48 ROLLS / CASE	Case	48	GEORGIA PACIFIC	15100	640-75-56-2609	\$34.28
20	TOILET TISSUE 1PLY ROLLS WHITE WRAPPED 4.5"X4.05"L SHEET 1210SHEETS/ ROLL 80/ROLLS / CASE APPRX BASIS WGT 10.4 LBS	Case	80	GEORGIA PACIFIC	14580	640-75-61-0507	\$30.62
21	TIOLET TISSUE DISPENSER ROLL WHITE 1PLY NON-PERFORATED 3.55" X 2000' ROLL 3.3"CORE 8 ROLLS/ CASE APPRX BASIS WGT 10.4LB	Case	8	GEORGIA PACIFIC	13718	640-75-64-0550	\$15.60
22	TOILET TISSUE DISPENSER ROLL WHITE 1PLY 3.7"X4000' ROLL 3" CORE 6 ROLLS / CASE APPRX BASIS WGT 10.4LBS	Case	6	GEORGIA PACIFIC	13105	640-75-64-0811	\$23.15
23	WASHCLOTHS WHITE DISPOSABLE 13"X13" 50SHEETS/ PKG 20 PACKS / CASE APPRX BASIS WGT 51 LBS	Case	20	GEORGIA PACIFIC	80534	640-50-82-1101	\$34.35